Ketua Pengarah Pertubuhan Keselamatan Sosial v Jusoh bin Abu Bakar

HIGH COURT (KUALA TERENGGANU) — CIVIL APPEAL NO 16-04 OF 2001
NIK HASHIM J
18 DECEMBER 2002

Labour Law *— Social security — Disputes pertaining to — Respondent met with accident on his way from his permanent house to his rented house — Respondent had to stop at his rented house before proceeding to place of work in employer's motor van — Whether accident was an employment injury under s 2(6) of Employees' Social Security Act 1969 — Whether respondent's permanent house can in law be considered as his place of residence in relation to his place of work for the purpose of s 24(1)(a) of the Employees' Social Security Act 1969 — Whether respondent's journey from permanent house to rented house can be considered as travelling on a route between his place of residence and his place of work*

The respondent, an insured person under the Employees' Social Security Act 1969 ('the Act') met with an accident on his way from his permanent house in Teluk Ketapang, Kuala Terengganu to his rented house at Paka, Dungun. He had to stop at his rented house to change into his uniform before proceeding to his place of work at Lapangan Terbang Kertih in his employer's motor van. The respondent claimed for benefits under the Act. The appellant rejected the claim on the ground that the accident was not employment injury under s 2(6) of the Act. Thereafter, the respondent appealed to the Social Security Appellate Board ('the Board') contending that the accident was employment injury which arose out of and in the course of his employment pursuant to s 24(1)(a) of the Act. The Board allowed the respondent's appeal, hence this appeal from the appellant.

Held, allowing the appeal:

(1) Section 24(1) of the Act clearly stated that an accident happening to an insured person shall be deemed to arise out of and in the course of his employment if it happened while he travelled in any of the journeys that were listed under sub-s 1(a), (b) or (c). By the use of the word 'or' after sub-s 1(b), the paragraphs (a), (b) and (c) of s 24(1) were to be read disjunctively and not conjunctively as submitted by the appellant (see p 21B–C).

(2) The accident in the instant case was not an employment injury under s 2(6) of the Act. The respondent's permanent house cannot in law be considered as his place of residence or stay in relation to his place of work for the purpose of s 24(1)(a) of the Act as it was not the respondent's home or base from where he went out to work everyday. Therefore, the respondent's journey from Teluk Ketapang to Paka on the day of the accident cannot

be considered as travelling on a route between his place of residence or stay and his place of work (see p 21E–G). A

(3) Accordingly, the Board had erred in law when it held that the accident was an employment injury (see p 21H).

B

[Bahasa Malaysia summary

Responden, seorang yang diinsuranskan di bawah Akta Keselamatan Sosial Pekerja 1969 ('Akta tersebut') ditimpa kemalangan semasa dalam perjalanan dari rumah tetap di Teluk Ketapang, Kuala Terengganu ke rumah yang disewa di Paka, Dungun. Beliau terpaksa singgah di rumah sewa untuk menukar pakaian seragam sebelum terus ke tempat kerja di Lapangan Terbang Kertih dalam motor van majikannya. Responden menuntut manfaat di bawah Akta tersebut. Perayu menolak tuntutan atas alasan bahawa kemalangan itu bukanlah kecederaan pekerjaan di bawah s 2(6) of the Act. Selepas itu, responden merayu kepada Lembaga Rayuan Keselamatan Sosial ('Lembaga tersebut') dengan berhujah bahawa kemalangan itu adalah kecederaan pekerjaan yang timbul daripada dan semasa pekerjaan menurut s 24(1)(a) Akta tersebut. Lembaga tersebut membenarkan rayuan responden, justeru itu rayuan ini dari perayu dikemukakan. C D

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Diputuskan, membenarkan rayuan:

(1) Seksyen 24(1) Akta tersebut jelas menyatakan bahawa satu kemalangan yang berlaku kepada seseorang yang diinsuranskan hendaklah dianggap timbul daripada dan semasa pekerjaannya sekiranya ia berlaku semasa beliau dalam perjalanan yang disenaraikan di bawah seksyen kecil 1(a), (b) atau (c). Melalui penggunaan perkataan 'or' selepas seksyen kecil 1(b), perenggan-perenggan (a), (b) dan (c) s 24(1) hendaklah dibaca secara disjunktif dan bukan konjunktif seperti yang dihujah oleh perayu (lihat ms 21B–C). F G

(2) Kemalangan dalam kes ini bukanlah kecederaan pekerjaan di bawah s 2(6) Akta tersebut. Rumah tetap responden tidak boleh dianggap di sisi undang-undang sebagai tempat tinggalnya berhubung dengan tempat kerjanya untuk tujuan s 24(1)(a) Akta tersebut kerana ia bukanlah rumah atau pengkalan responden dari mana beliau keluar bekerja setiap hari. Maka, perjalanan responden dari Teluk Ketapang ke Paka pada hari kemalangan tidak boleh dianggap sebagai perjalanan yang diambil di antara tempat tinggal dan tempat kerja (lihat ms 21E–G). H

(3) Dengan itu, Lembaga tersebut terkhilaf di sisi undang-undang apabila ia memutuskan bahawa kemalangan tersebut adalah kecederaan pekerjaan (lihat ms 21H).] I

Notes

For cases on disputes pertaining to social security, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) para 1379.

Legislation referred to

Employees' Social Security Act 1969, ss 2(6), 24(1), (a), (b), (c), 24(2), 84, 91(2)

K Maniam (*Wan Roziahanim bte Wan Abdul Ghani* with him) (*Skrine*) for the appellant.

Nik Hashim J:

The facts

The respondent, 54, and an employee with MHS Aviation Sdn Bhd Lapangan Terbang Kertih, Kemaman, was certified by the appellant as an insured person under the Employees' Social Security Act 1969 ('the Act'). On 28 September 1998, at about 2pm after finishing his duties, the respondent returned to his permanent home at Kampung Teluk Ketapang, Kuala Terengganu. On the next day, 29 September 1998 at about 8.45am, he left Telu Ketua Pengarah Pertubuhan Keselamatan Sosial v house at Paka, Dungun to Jusoh bin Abu Bakar (Nik Hashim J) l proceed to his place of work at Lapangan Terbang at Kertih by his employer's motor van. At about 9.30am before reaching Paka, at Bukit Cendering, Km 11, Jalan Kuala Terengganu/Dungun, the respondent met with an accident and thereby suffered personal injuries namely, fracture of left hand and abrasions on the face.

As a result of the respondent's claim for the benefits under the Act, the Pertubuhan Keselamatan Sosial ('PERKESO'), the appellant, conducted an investigation into the matter, and concluded with a ruling that the accident was not employment injury by virtue of ss 2(6) and 24(1) and (2) of the Act on the ground that the accident happened while the respondent was travelling from his house at Kampung Teluk Ketapang to his rented house at Paka, which journey was not arising out of and in the course of his employment. This is what the appellant said:

> Berdasarkan kepada siasatan dan butir-butir yang diperolehi, Pertubuhan Keselamatan Sosial telah memutuskan bahawa kemalangan yang berlaku ke atas orang berinsuran pada 29 September 1998 adalah bukan suatu kes 'bencana kerja' di dalam lingkungan maksud seksyen 2(6), 24(1), 24(2) Akta Keselamatan Sosial Pekerja 1969. Ini disebabkan oleh kemalangan berlaku semasa dalam perjalanan dari rumah kediaman di Kampung Teluk Ketapang, Kuala Terengganu ke rumah sewa di Paka, Dungun, Terengganu.

Dissatisfied with the appellant's ruling, and acting under s 84 of the Act, the respondent referred the disputed matter to the Social Security Appellate Board ('the Board') for its decision, and he contended that the accident was

an employment injury which arose out of and in the course of his employment pursuant to s 24(1)(a) of the Act.

The Board agreed with the respondent's contention and held that the accident was employment injury under s 2(6) of the Act. The Board in allowing the respondent's claim observed:

> Adalah pendapat Jemaah ini masa di antara tamat kerja dan masa berlaku kemalangan atau di antara masa bertolak daripada rumah ke tempat kerja bukanlah faktor yang patut diambil kira. Faktor ini tidak disebut dalam s 24 Akta PERKESO. Isunya sama ada dia dalam perjalanan daripada tempat dia tinggal (place of residence) atau tempat dia menetap (place of stay) dan tempat kerjanya. Dalam kes ini orang berinsuran adalah dalam perjalanan daripada rumah tetapnya di Seberang Takir dan dalam perjalanan ke tempat kerja. Oleh sebab yang tempat itu jauh dari tempat kerjanya ini semestinya memakan masa yang panjang. Jemaah puas hati kesnya memenuhi kehendak s 24(1)(a) Akta PERKESO dan oleh yang demikian meluluskan permohonannya dan mengira kemalangannya itu adalah bencana kerja di bawah s 2(6) Akta PERKESO.

The appeal

Aggrieved by the Board's decision, the appellant, acting under s 91(2) of the Act, appealed to this court contending that the decision of the Board involved a substantial question of law in that the decision of the Board was contrary to the provisions of s 24(1) and (2) of the Act, and according to learned counsel, there seems to be no reported case as yet on the application of the section in the country.

The findings of the court

With respect, I agree with the appellant that its contention involves a substantial question of law as it involves the interpretation of certain provisions of the Act and their application to the facts of this case. The provisions that are relevant are ss 2(6) and 24(1) and (2), and for ease of reference, they are now reproduced.

Section 2(6) of the Act defines 'employment injury' to mean a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in an industry to which this Act applies.

The provisions relating to accidents while travelling are provided under s 24 of the Act which states:

> (1) An accident happening to an insured person shall be deemed to arise out of and in the course of his employment if the accident happens while the insured person —
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> (a) is travelling on a route between his place of residence or stay and his place of work;
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> (b) is travelling on a journey made for any reason which is directly connected to his employment; or
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> (c) is travelling on a journey between his place of work and the place where he takes his meal during any authorized recess.

(2) If the accident under subsection (1) occurs during any interruption of or deviation from, the insured person's journey made for any of the purposes stipulated in the same subsection, the accident shall not be deemed to arise out of and in the course of his employment.

The issue before the court is whether the accident was an employment injury, a personal injury caused by an accident arising out of and in the course of his employment by virtue of ss 2(6) and 24(1)(a) of the Act.

Section 24(1) clearly states that an accident happening to an insured person shall be deemed to arise out of and in the course of his employment if it happens while he travels in any of the journeys that are listed under sub-s 1(a), (b) or (c). By their provisions and the usage of the word 'or' after sub-s (1)(b), the paras (a), (b) and (c) of sub-s (1) of s 24 are to be read disjunctively, and not conjunctively as submitted by the appellant. In construing s 24(1)(a), (b) and (c), the provision of sub-s (2) must not be disregarded as the subsection provides that the accident shall not be deemed to arise out of and in the course of the insured person's journey, if the accident occurs during any interruption of, or deviation from the journey made for any of the purposes stipulated under sub-s 1(a), (b) or (c). However, from the facts of this case, it appears that sub-s (2) is not quite applicable as the accident did not occur during any interruption of or deviation from the journey on a route between the respondent's place of residence or stay and his place of work.

The provision that is pertinent for consideration in the instant case, is sub-s 1(a) of s 24 which deals with a travelling on a route between the respondent's place of residence or stay and his place of work.

Having perused the record and considered the submission of learned counsel for the appellant, it is my judgment that the accident was not an employment injury under s 2(6) of the Act. The respondent's house at Kampung Teluk Ketapang, Kuala Terengganu cannot in law be considered as his place of residence or stay in relation to his place of work for the purpose of s 24(1)(a) of the Act, simply because it is not the respondent's home or base from where he goes out to work everyday. The Ketapang house is his weekend retreat. Therefore, the respondent's journey from Teluk Ketapang to his rented house at Paka on that fateful day cannot be considered as a travelling on a route between his place of residence or stay and his place of work. His place of residence or stay is the rented house at Paka. It is from this house that his employer provided him with a van to go to work and return. Had it not been for the accident, the respondent would have gone to his place of work by van. To hold that the Teluk Ketapang house is the respondent's place of residence or stay for the purpose of s 24(1)(a) would be, to my mind, to overstretch the provision under the section beyond its reasonable limit.

In the event, I rule that the Board had erred in law when it found the accident was an employment injury. The accident was clearly not a commuting accident envisaged under s 24(1)(a), as it happened outside the route between the respondent's place of residence and his place of work, and in this respect, I agree with the appellant when it held the accident was

not an employment injury, and thus, the accident did not arise out of and in the course of the respondent's employment. A

With that finding, I allow the appeal, set aside the order of the Board and restore the decision of the appellant with no order as to costs.

Appeal allowed.

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Reported by Lim Lee Na

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